

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Kevin Andrew Isom,

No. CV-22-01084-PHX-JJT (DMF)

10 Petitioner,

ORDER

11 v.

12 Mark Brnovich, *et al.*,

13 Respondents.

14

15 At issue is the Report and Recommendation (Doc. 21, “R&R”) entered in this matter
16 by United States Magistrate Judge Deborah M. Fine recommending that the Court dismiss
17 with prejudice the Amended Petition Under 28 U.S.C. Section 2254 for Writ of Habeas
18 Corpus by a Person in State Custody (Doc. 11) as untimely, and deny the Motion to Release
19 Petitioner Pending Final Decision (Doc. 15). In the R&R, Judge Fine warned the parties
20 that they had fourteen days from service of the R&R to file specific objections thereto, and
21 that “[f]ailure to file timely objections to the Magistrate Judge’s [R&R] may result in the
22 acceptance of the [R&R] by the District Court without further review. See *Reyna v. Tapia*,
23 328 F.3d 1114, 1121 (9th Cir. 2003).” (R&R at 3.) As the case is subject to electronic filing
24 (Doc. 3) and Petitioner has access to CM/ECF, the R&R was served on him upon its entry
25 into ECF, on April 12, 2023, and his fourteen days to object to the R&R ran on April 26,
26 2023. Nearly two months have passed since that deadline and Petitioner still has filed no
27 objections to the R&R. The Court thus may accept the R&R without further review. It
28 nonetheless reviews the recommendations and their bases on their merits, and upon doing

1 so, concludes Judge Fine's thorough and exhaustive reasoning is sound and fully supported
2 in the law.

3 Petitioner's first PCR proceedings regarding Count 1—one of two counts at issue
4 here—ceased pending on November 10, 2020, and AEDPA's one-year limitations period
5 began running the next day; thus the last day for him to file a Petition under Section 2254
6 was November 12, 2021. He did not file his Amended Petition addressing the grounds in
7 Count 1 until October 14, 2022, and therefore was over eleven months outside the
8 limitations period, even with statutory tolling during his PCR review of Count 1.

9 Petitioner's first PCR proceedings regarding Count 2 became final on December 15,
10 2020, and AEDPA's limitations prior began to run the next day, expiring on December 16,
11 2021. Again, he did not file his Petition in this matter addressing the grounds in Count 2
12 until October 14, 2022, which was almost ten months too late.

13 As Judge Fine correctly noted, Petitioner did not argue that equitable tolling applied
14 in his case. Nor did he argue actual innocence. His Petition as to both Counts 1 and 2 is
15 thus untimely without excuse or exception, and therefore must be dismissed as such.

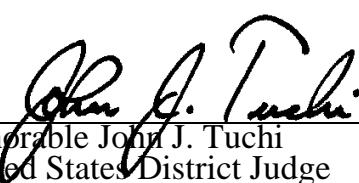
16 **IT IS ORDERED** adopting Judge Fine's R&R in its entirety.

17 **IT IS FURTHER ORDERED** dismissing with prejudice as untimely the Petition
18 Under 28 U.S.C. Section 2254 for Writ of Habeas Corpus by a Person in State Custody
19 (Doc. 11) and ordering the Clerk of Court to terminate this matter.

20 **IT IS FURTHER ORDERED** denying the Motion to Release Petitioner Pending
21 Final Decision (Doc. 15) upon a conclusion that Petitioner has shown no likelihood of
22 success on the merits.

23 **IT IS FURTHER ORDERED** denying a certificate of appealability in this matter.
24 The dismissal is based on a plain procedural bar. Reasonable jurists would not find that
25 ruling debatable.

26 Dated this 16th day of June, 2023.

27 
28 Honorable John J. Tuchi
United States District Judge